

HOUSE BILL 3195

By Hardaway

AN ACT to amend Tennessee Code Annotated, Title 7 and Title 57, relative to cabarets.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 57, Chapter 4, is amended by adding a new Part 4, as follows:

§ 57-4-401. This part shall be known as the “Tennessee Cabaret Licensing Act of 2008”.

§ 57-4-402. As used in this part, unless the context otherwise requires:

(1) “Act” means the Tennessee cabaret licensing act of 2008;

(2) “Alcoholic beverage” means an alcoholic beverage or beverage as defined in § 57-4-102 and beer as defined in § 57-6-102;

(3) “Cabaret” means any commercial establishment or business where alcoholic beverages and/or beer are sold and/or consumed on the premises, that offers or provides cabaret entertainment for patrons or guests, and that is appropriately licensed in accordance with this part;

(4) “Cabaret entertainer” means any individual twenty one (21) years of age or older who performs cabaret entertainment at a cabaret;

(5) “Cabaret entertainment” means amusement or entertainment that features as its principal theme, professional entertainers or live performances to which exposure of any specified anatomical area is exhibited, including amusement or entertainment which features professional exotic entertainers and/or dancers, or similar entertainment by persons who remove articles of clothing as part of the performance, which performance may or may not include music, and appear in a nude or semi-nude state; provided, however, that cabaret entertainment shall not include exhibition of movies or moving

pictures or live performances in which participants are engaging in specified sexual activities;

(6) "Commission" means the Tennessee alcoholic beverage commission;

(7) "Licensee" means a cabaret licensed in accordance with this act;

(8) "Patron" means any person who gains entry and/or admission to enter or is knowingly allowed to remain inside of a licensed premises, regardless of whether the person paid any fee, or exchanged anything of value, to enter or remain inside, or purchased any product or service;

(9) "Specified anatomical areas" means:

(A) Less than completely and opaquely covered:

(i) Human genitals;

(ii) Pubic region;

(iii) Buttocks; and

(iv) Female breasts below a point immediately above the top of the areola; and

(B) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; and

(10) "Specified sexual activities" means acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

§ 57-4-403.

(a) The commission is authorized to issue licenses in accordance with the requirements of this part.

(b) Any person, partnership, corporation, limited liability company, or other entity desiring to secure a cabaret license shall make application to the commission.

(c) Neither the applicant nor any person with ownership interests shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor or of any felony within eight (8) years prior to the application for a license hereunder.

(d) The applicant shall not have been convicted of any crime relating to the sale of alcoholic beverages, beer, schedules 1 and 2 controlled substances or any sex-related crime or embezzlement within the previous eight (8) years.

(e) The application for a license shall be upon a form provided by the commission. An applicant for a license shall furnish the following information:

(1) Name and current address, including any entity, stockholder, owner or partner holding greater than five percent (5%) ownership;

(2) Proof that the individual is at least twenty-one (21) years of age;

(3) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application;

(4) The cabaret or other business license history of the applicant; whether such applicant, in previously operating in this or any other state, county or city under a similar license, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subject to such action of suspension or revocation;

(5) The address of the cabaret to be operated by the applicant;

(A) If the applicant is a partnership, the application shall specify the name and address of the partnership, and the name and address of all general partners of the partnership;

(B) If the partnership is a limited partnership, the application shall specify the name and address of all general partners who have a controlling interest in the partnership; and

(6) A statement by the applicant that the applicant is familiar with the provisions of this part and is in compliance with this part.

(f) The commission may conduct a criminal record review of any applicant for a cabaret license to ensure the applicant's compliance with the requirements of this part. The commission shall employ the best available means to conduct this investigation.

(g) The commission may assess an application and renewal fee for the license to be issued under this part not to exceed five hundred dollars (\$500) for the application and two thousand dollars (\$2,000) for the license. The commission shall establish such fees, pursuant to rules promulgated in accordance with title 4, chapter 5, and such fees shall be limited only to covering the costs of implementing this part.

§ 57-4-404.

(a) Except as provided in subsection (e), from and after July 1, 2009, no cabaret as defined in this act shall be operated or maintained without first obtaining a license to operate issued by the commission.

(b) A license may be issued only for one (1) cabaret located at a fixed and certain place. Any person, partnership, corporation, limited liability company, or other entity that desires to operate more than one (1) cabaret must have a license for each location.

(c) No license or interest in a license may be transferred to any other party.

(d) It is an offense punishable as a Class C misdemeanor for any entertainer, employee, or operator to knowingly work in or about or to knowingly perform in any unlicensed cabaret.

(e) Within one hundred twenty (120) days of the effective date of this act if any existing establishment that provides cabaret entertainment submits a timely application for an appropriate license or permit, as set forth in this subsection (e), such establishment shall be granted a conditional license or permit maintaining the status quo, pending final review by the commission. If a timely application is not filed within the one-hundred-twenty-day period, or no license or permit is issued by the commission, then such establishment shall cease to operate as a cabaret.

(f) No license shall be issued by the commission unless the applicant certifies that the applicant has satisfied the rules, regulations and provisions of the applicable zoning requirements in the location of the establishment. Any zoning requirement shall be in addition to and not an alternative to any requirement of this part.

(g) Each cabaret license shall be valid for one (1) year. Applications for renewal shall be made in a manner prescribed by the commission not inconsistent with this part. Licenses are not transferable.

§ 57-4-405.

(a) A licensed cabaret is authorized to sell alcoholic beverages to be consumed by persons of legal age as defined in § 57-4-203 on the premises of, or within the boundaries of, such cabaret.

(b) This section shall not apply in any county or municipality which has not approved the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-103.

(c) The provisions of this part shall be effective in any jurisdiction which authorizes the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106. Provided that, with respect to licensed cabarets, if such a referendum is held by a county and approved by the voters,

then a licensed cabaret shall not be restricted to locations only within the corporate limits of municipalities meeting the requirements of § 57-3-106, but may also be located outside the corporate limits of municipalities located in such county.

(d) Any eligible cabaret that applies for a cabaret liquor-by-the-drink license in addition to the cabaret license defined herein must comply with all applicable provisions of title 57, chapter 4, unless otherwise provided herein.

(e) Each county, city, or metropolitan government is empowered upon approval by a two-thirds ($\frac{2}{3}$) vote of its legislative body to authorize its law enforcement officers to conduct investigations into alleged violations of this part and such law enforcement officers shall report such violations to the commission for appropriate action.

§ 57-4-406.

(a) The commission is authorized to issue permits in accordance with the requirements of this part.

(b) Any individual seeking to perform cabaret entertainment must hold a valid cabaret entertainer permit. Individuals shall make application for such permit by completing an application form in a manner prescribed by the commission. The applicant for a cabaret entertainer permit must demonstrate that the applicant meets the requirements in subsection (c) of this section.

(c) An applicant for a cabaret entertainer permit must demonstrate to the commission that the applicant meets the following:

(1) The applicant has not been convicted of any crime relating to schedules 1 and 2 controlled substances or any sex-related crime within the previous eight (8) years of application;

(2) The applicant has not had a cabaret entertainer permit or similar permit issued in a foreign jurisdiction revoked by any issuing authority within the previous two (2) years;

(3) The applicant has not had any ownership interest in any licensee, which has had its license or permit revoked by the issuing authority within the previous eight (8) years; and

(4) The applicant is at least twenty one (21) years of age.

(d) The commission may conduct a criminal record review of any applicant for a cabaret entertainer permit to ensure the applicant's compliance with the requirements of this part. The commission shall employ the best available means to conduct this investigation.

(e) A new cabaret entertainer may work for up to five (5) days without a cabaret entertainer permit. The entertainer must apply to the commission for a temporary permit to continue working beyond the five (5) days. The cost of the temporary permit shall not exceed twenty-five dollars (\$25.00) and shall be valid for up to sixty-one (61) days.

(f) Upon payment of a reasonable copying fee, the commission is authorized and directed to issue replacement permit cards to any cardholder who is qualified under this part for a cabaret entertainer permit which is still valid. Cabaret entertainer permit cards are hereby declared the property of the cabaret entertainer to whom such cards have been issued. Licensees shall be required to maintain a copy of a cabaret entertainer card on the premises for the duration of the contract or employment of such cabaret entertainer.

(g) Each cabaret entertainer permit shall be valid for two (2) years. Applications for renewal shall be made in the same manner as applications for original permits upon forms prescribed by the commission. Permits are not transferable.

(h) The commission may assess an application and renewal fee for the permits not to exceed fifty dollars (\$50.00) for the application and one hundred dollars (\$100) for the permit to be issued under this part. The commission shall establish such fees, only pursuant to rules promulgated in accordance with title 4, chapter 5, and such fees shall be limited only to covering the costs of implementing this part.

(i) The information collected by the commission to issue cabaret entertainer permits in this part shall be held confidential by the commission and shall not be subject to the public records act in title 10, chapter 7.

§ 57-4-407. The commission shall have authority to assess a fine in accordance with § 57-1-201, revoke or suspend any license or permit granted under this part for a violation of a provision of any applicable provision of this part, and any person aggrieved by the action of this commission in revoking or suspending a license or permit, or in refusing to grant a license or permit, may have such action reviewed as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 57-4-408.

(a) Fees collected pursuant to this act shall be deposited by the commission in a special agency account to be known as the "Cabaret licensing fund", hereinafter referred to in this part as "fund".

(b) Any fund balance remaining unexpended at the end of a fiscal year in the fund shall be carried forward into the subsequent fiscal year and shall continue to be preserved for the administration of the Tennessee cabaret licensing act and relevant administration and enforcement of cabaret liquor licenses.

(c) Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year.

(d) Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the commission.

(e) Moneys in the fund shall only be expended and obligated in accordance with appropriations made by the general assembly for the purposes provided in this part.

§ 57-4-409. The commission is authorized to promulgate appropriate rules pursuant to title 4, chapter 5, to implement the provisions of this part.

SECTION 2. Tennessee Code Annotated, Section 7-51-1104, is amended by adding the following language as a new, appropriately designated subsection:

() This part shall not apply to or otherwise prohibit the operation and licensing of cabarets in accordance with title 57, chapter 4, part 4.

SECTION 3. Tennessee Code Annotated, Section 7-51-1406, is amended by adding the following language as a new, appropriately designated subsection:

() This part shall not apply to or otherwise prohibit the operation and licensing of cabarets in accordance with title 57, chapter 4, part 4.

SECTION 4. Tennessee Code Annotated, Section 57-4-101, is amended by adding the following language as a new, appropriately designated subsection:

() Except as provided in § 57-4-405(b), it is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any cabaret as defined in part 4 of this chapter, subject to the provisions of such part.

SECTION 5. Tennessee Code Annotated, Section 57-4-102, is amended by adding the following language as a new, appropriately designated subdivision:

() “Cabaret” means any commercial establishment or business where alcoholic beverages and/or beer are sold and/or consumed on the premises, that offers or

provides cabaret entertainment for patrons or guests, and that is appropriately licensed in accordance with this part;

SECTION 6. Tennessee Code Annotated, Section 57-4-201(b)(1), is amended by inserting the language "cabaret," between the language "club," and the language "historic performing arts center".

SECTION 7. Tennessee Code Annotated, Section 57-4-201(d)(2), is amended by inserting the language "cabaret," between the language "club," and the language "historic performing arts center".

SECTION 8. Tennessee Code Annotated, Section 57-4-201(d)(6), is amended by inserting the language "cabaret," between the language "club," and the language "zoological institution".

SECTION 9. Tennessee Code Annotated, Section 57-4-204, is amended by adding the following language as a new, appropriately designated subsection:

() To the extent certain provisions of this section are inconsistent with title 57, chapter 4, part 4, this section shall not apply to any licensed cabaret entity or permitted entertainer as defined by title 57, chapter 4, part 4, or on any licensed premises thereof, or on the premises of any establishment holding a valid cabaret liquor license and with respect to such entities or entertainers, the provisions of part 4 shall control.

SECTION 10. This act shall take effect January 1, 2009, the public welfare requiring it.